IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2194 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

==========

MANAGER, SURAT TEXTILE MARKET CO. OP. SHOPS & WAREHOUSE - Petitioner(s)

Versus

ASHOKBHAI K PATEL - Respondent(s)

==========

Appearance :
MR DEEPAK V PATEL for Petitioner(s) : 1,
MR MS MANSURI for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/12/2005

ORAL JUDGMENT

1.0 By way of this petition, the petitioner has prayed to quash and set aside the Order below Exh. 12

dated 05.01.2001 passed by the Labour Court, Surat, in Reference (LCS) No. 196 of 1990, whereby the Labour Court held the departmental inquiry proceedings initiated against the respondent employee as violative of the principles of natural justice.

2.0 The brief facts of the case are as under;

2.1 The petitioner herein is a Co-operative Society registered under the provisions of the Gujarat Co-Operative Societies Act. The respondent was working as an Assistant Engineer with the petitioner Society. On 28.04.1989 the respondent was suspended from service pending enquiry for committing serious misconduct for which he was also issued with a charge-sheet.

2.2 On that day itself, the respondent submitted his reply to the said suspension order. Since the reply submitted by the respondent was not found to be satisfactory by the petitioner authority, on 20.05.1989 the respondent was served with another charge-sheet and it was decided to hold departmental enquiry against him. After considering all the documents produced on record, the petitioner, vide order dated 15.02.1990, dismissed

the respondent from service.

2.3 Being aggrieved by the said order of dismissal, the respondent raised an industrial dispute by way of a reference before the Labour Court, Surat. Statement of claim was filed by the respondent vide Exh.6 wherein the respondent prayed to declare the dismissal order as illegal and further to grant reinstatement with full back wages. The petitioner filed its written statement vide Exh.9.

2.4 The petitioner Society raised preliminary objection vide Exh. 39 stating that the respondent is not a workman as per the definition u/s. 2(S) of the Industrial Disputes Act, 1947, since the respondent was drawing salary of more than Rs.500/- and was performing duty of a supervisory nature. On this application, the Labour Court ordered that the said issue shall be decided at the time of deciding the reference.

2.5 The respondent had also filed application Exh.12 challenging the validity and legality of the departmental enquiry held against him. The Labour Court, after considering the evidence on record held the departmental

enquiry proceedings as illegal and violative of the principles of natural justice.

2.6 Being aggrieved by the said order passed below Exh.12, the petitioner Society has preferred this petition before this Court.

3.0 Mr. D. V. Patel learned advocate for the petitioner has contended that in the enquiry proceedings held against the respondent, the Enquiry Officer had granted sufficient opportunity as well as adjournments as and when prayed for by the respondent. Learned advocate has submitted that the Labour Court has failed to appreciate the fact that the respondent had fully co-operated with the enquiry proceedings and had never complained that he was in financial or any other difficulty. He has, therefore, submitted that the conclusion arrived at by the Labour Court that the proceedings were violative of the principles of natural justice is unjust and improper.

4.0 Mr. M.S. Mansuri learned advocate for the respondent has submitted that the Labour Court was completely justified in holding the departmental enquiry

proceedings as violative of the principles of natural justice since it has recorded a finding of fact that the respondent was not permitted to engage one of his co-employees for his assistance in the said enquiry proceedings.

5.0 Heard learned counsel for the parties and perused the documents placed on record. From the record, it appears that the Enquiry Authority has followed the procedure prescribed under the law. The Enquiry Authority has given full opportunity to the respondent to defend his case and had also granted adjournments as and when prayed for by him. Moreover, the respondent had also actively participated in the enquiry proceedings and had also examined and cross-examined the witnesses.

6.0 In the impugned order, the Labour Court has recorded a finding that the enquiry held by the Enquiry Authority was proper in all respects. When the Labour Court itself has arrived at a conclusion that the enquiry proceedings were just and proper, then it ought not to have held that the proceedings were against the established principles of natural justice.

7.0 The Labour Court has quashed the enquiry proceedings on the ground of violation of the principles of natural justice and not on the ground of non-payment of subsistence allowance. The documents which were sought for by the respondent were supplied by the petitioner. However, at the time when the demand was required to be raised, the respondent had not raised it. The demand was raised only at the stage when it came to the knowledge of the respondent that the enquiry findings were against him. Therefore, there is mistake / omission on the part of the respondent - employee for not taking necessary action at the relevant point of time. The respondent cannot be permitted to take advantage of his own lapse / omission after the enquiry is over and when the conclusion is against him.

8.0 It is required to be noted that the respondent herein had produced several documents by way of exhibits which were considered by the Labour Court while deciding application below Exh.12. Along with the said list of documents, the respondent had also supplied documents vide Exhs.32 to 35 with respect to claiming subsistence allowance. However, no further proceedings with respect to claiming the said allowance were initiated by the

respondent. The said contention was raised only after the Enquiry Authority had submitted its report and when it came to his knowledge that the findings were against him. Thus, it is clear that the contention with respect to subsistence allowance was raised at a very belated stage and that to when it came to the knowledge of the respondent that the findings of the Enquiry Authority were not in his favour.

9.0 The decision relied upon by the learned advocate for the respondent in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., & Anr., reported in 1999 (1) L.L.J. pg.1094** shall not apply to the case on hand inasmuch as in that case the appeal was allowed for the reason that the appellant had been punished in total violation of the principles of natural justice and was not afforded any opportunity of hearing and that on account of non-payment of subsistence allowance to the respondent during pendency of the departmental proceedings, the employee could not undertake a journey to attend the proceedings. Therefore, the proceedings were held to be ex-parte and, accordingly, stood vitiated.

9.1 In the present case, the respondent has not raised any contention to the effect that during the course of enquiry the principles of natural justice were violated by the employer and that the respondent was not afforded any opportunity of hearing.

9.2 In fact, the respondent had fully co-operated with the enquiry proceedings. The contention with respect to non-payment of subsistence allowance has been raised only after the submission of the enquiry report. Hence, the said decision cannot come to the rescue of the respondent.

10.0 The next decision relied upon by the learned advocate for the respondent is in the case of **V.P. Gidroniya v. State of M.P. & ors., reported in 1970 II L.L.J. pg. 143**, wherein it has been held that the employee has a right to get the subsistence allowance.

10.1 The said decision pertains to the Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 which do not provide for suspension during the pendency of an enquiry. In the case on hand, the respondent herein is not governed under any such

statutory Rules. Thus, the said decision also will not apply to the case on hand.

11.0 The next decision relied upon by the learned advocate for the respondent is in the case of **Cooper Engineering Ltd., v. Shri P.P. Mundhe reported in A.I.R. 1975 S.C. Pg.1900** and, more particularly, on the following observations;

> "We are, therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue."

11.1 Since it is clearly established that the respondent herein was given full opportunity to defend his case, which was also accepted by the Labour Court, then the Labour Court ought not to have concluded that the enquiry proceedings were violative of the principles of natural justice. The petitioner had followed all the procedure prescribed under the law. Thus, the said decision also will not be of any help to the respondent.

12.0 The next decision relied upon by the learned

advocate for the respondent is in the case of **Dinesh Mills Ltd. v. Kedarnath R. Pande reported in 1998 II C.L.R. pg. 480**. In that case, this Court has held that there will be no justification for the employer to stall final adjudication of any dispute by questioning the decision of the Labour Court on preliminary issue and it will be legitimate for the High Court to refuse to intervene at this stage to avoid undue delay in industrial adjudication.

12.1 The law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of ***Surya Dev Rai Vs. Ram Chander Rai, reported in (2003)6 SCC 675***, the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law, unless the error is manifest and apparent on the face of the proceedings, such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or

gross failure of justice has occasioned thereby.

12.2 The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. In the case on hand, this Court does not find any error of fact or of law manifest and apparent on the face of the enquiry proceedings held by the petitioner. Thus, it has to be concluded that the enquiry proceedings were conducted after following the due procedure established under the law.

13.0 In above view of the matter, I am of the opinion that the impugned order of the Labour Court is illegal and improper and it is required to be quashed and set aside since it has proceeded on mis-conception of law and has wrongly set aside the enquiry proceedings on the ground of violation of the principles of natural justice.

14.0 For the foregoing reasons, this petition is allowed. The impugned order dated 05.01.2001 passed by the Labour Court, Surat, in Reference (LCS) No. 196 of 1990 is quashed and set aside. The Labour Court is directed to proceed with the hearing of the Reference

being Reference (LCS) No. 196 of 1990 and to dispose of the same, as expeditiously and possible and, preferably within a period of one year from the receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *